

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

November 30, 2012

- I. **ATTENDANCE** – Mr. Stumbo agreed to Chair the meeting, and he called the meeting to order at 1:01 p.m. in the Council Chambers, 200 East Main Street, on November 30, 2012. Members present were James Griggs, Thomas Glover, Noel White, Joe Smith and Barry Stumbo. Members Kathryn Moore and Janice Meyer were absent. Others present were Jim Gallimore, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones, Department of Law. Staff members in attendance were Jimmy Emmons, Bill Saltee and Wanda Howard.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the September 28, 2012 meeting would be considered at this time.

Action – A motion was made by Mr. Griggs, seconded by Ms. White and carried unanimously (Moore and Meyer absent) to approve the minutes of the September 28, 2012 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Swearing of Witnesses** – Mr. Stumbo asked those wishing to speak at today's meeting to stand at this time. He administered the oath to several members of the audience who wished to speak.

- B. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chair will sound the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair will announce that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **A-2012-45: CHEROKEE PARK NEIGHBORHOOD ASSOCIATION** - requests an administrative review of a Zoning Compliance Permit issued for a mobile MRI facility in a Professional Office (P-1) zone, on property located at 1713 Nicholasville Road (Council District 3).

As this is a 3rd party appeal, there is no recommendation for either approval or disapproval. A report will be made at the public hearing.

Representation – Mr. Richard Murphy, attorney representing the property owner at 1713 Nicholasville Road, said that this appeal had been postponed several times previously by the Board. He said that at the suggestion of Mr. Emmons, he was requesting an indefinite postponement of this appeal. He said that he and the neighborhood association were continuing to work out their disagreement, and that they would continue to do so. However, an indefinite postponement would allow the association to ask that this appeal be redocketed, if they so desired, at any time in the future.

Mr. Emmons said that he had received an e-mail from Mr. Grant, the representative from the Cherokee Park Neighborhood Association, requesting this indefinite postponement. He said that Mr. Grant understood that the neighborhood would have to supply new notification letters, if they ever wanted this appeal to be brought back to the Board. Mr. Emmons said that the staff is in agreement with the request for an indefinite postponement, given the fact that Mr. Murphy and the neighborhood have been working on this matter for several months.

Discussion – Mr. Glover asked if the Board had the authority to grant an indefinite postponement of an appeal. Mr. Emmons replied affirmatively, and said that the Board had granted them previously. He said that the key to such an action is the re-notification of all parties if this appeal were ever to be requested by the neighborhood to be brought back before the Board.

Action – A motion was made by Ms. White, seconded by Mr. Griggs and carried unanimously (Moore and Meyer absent) to indefinitely postpone **A-2012-45: CHEROKEE PARK NEIGHBORHOOD ASSOCIATION**.

2. **No Discussion Items** - The Chair will ask if there are any other agenda items where no discussion is needed...that

is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

Staff Comment – Mr. Emmons said, for the record, that all notifications have been mailed for these appeals, and that signs had been posted on locations proposed for Conditional Use Permits. He also reminded the Board that any items requested for a continuance or postponement would need to be forwarded to the Board's January meeting, as the deadline had already passed for the legal advertisement for the Board's December meeting.

- C. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- D. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2012-79: INDEPENDENT HEALTHCARE PROPERTIES, LLC** - appeals for a variance to reduce the required setback from the right-of-way for an identification sign from 10 feet to 0 feet in a Professional Office (P-1) zone, at 225 Ruccio Way (Council District 9).

The Staff Recommends: Approval of a variance from 10' to 1', for the following reasons:

- a. Granting the variance from 10' to 1' for the sign will not negatively affect the public health, safety or welfare; will not alter the character of the general vicinity; nor will it cause a hazard or nuisance to the public, assuming that the sign is outside the sight triangle as approved by the Division of Traffic Engineering.
- b. It is likely that most traffic will enter this site from the southern entrance and will exit through the northern access point because of the drop-off area in the front of the building. It is because of this anticipated traffic flow that the applicant desires to place the sign at the southern entrance, in order to enhance the visual clue to drivers that this is the entrance to the property.
- c. The existing 12' wide sanitary sewer easement located at the front of the lot severely limits the options for this business to locate a viable free standing identification sign, and is a unique situation that does not generally apply to most P-1 zoned properties.
- d. Strict application of the setback requirement will require that the sign be placed either perpendicular to the road or further back from the road, either of which will diminish the readability of the sign to drivers on Ruccio Way.
- e. The existing sanitary sewer easement was placed in its location on the subject site prior to the development of this property. Thus the circumstances of the requested variance are not a result of the applicant's own actions.

This recommendation of approval is made subject to the following conditions:

1. The sign shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Sign Permit shall be obtained from the Divisions of Planning and Building Inspection, respectively, prior to construction.
3. Prior to issuance of a sign permit, the Division of Traffic Engineering shall review the details of the sign and its placement. If necessary, the applicant shall make any modifications recommended by Traffic

Engineering to improve safety.

Representation – Mr. Tony Barrett, Landscape Architect with Barrett Partners, said that he had read the Staff Report, and that his client was in agreement with the staff's recommendations. He asked the Board to approve this request. Mr. Stumbo asked if the appellant was in agreement with the three recommended conditions. Mr. Barrett replied affirmatively.

Discussion – Mr. Emmons said that the request was for a variance from 10' to 0' but that the staff had recommended that a variance be granted from 10' to 1'. Mr. Stumbo asked Mr. Barrett if that was acceptable to the appellant. Mr. Barrett replied affirmatively.

Citizen Comment – There were no citizens present to comment on this proposal.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover and carried unanimously (Moore and Meyer absent) to approve **V-2012-79: INDEPENDENT HEALTHCARE PROPERTIES, LLC** – an appeal for a variance to reduce the required setback from the right-of-way for an identification sign from 10 feet to 1 foot in a Professional Office (P-1) zone, at 225 Ruccio Way based upon the staff's recommendation and subject to the three recommended conditions.

2. **V-2012-80: RALPH SENNINGER** - appeals for variances to: 1) reduce the required front yard from 50 feet to 15 feet; and 2) reduce the required rear yard from 25 feet to 5 feet in order to construct a single family residence in the Agricultural Rural (A-R) zone, at 8839 Beach Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the proposed variances will not adversely affect the public health safety or welfare, nor will it cause a hazard or nuisance to the public, as the replacement structure will be in the same location as the previous structure. Furthermore, the house will not impede the sight distance for vehicular traffic on either Beach Road or Old Richmond Road, and will not be out of scale with surrounding properties.
- b. Granting this request will not alter the general character of the vicinity, as the neighboring property at 8837 Beach Road is approximately at the same 15-foot setback requested by the applicant. More importantly, the proposed home will be sited in the same location as the previous structure and oriented in the same manner, which preserves the tree stands on the site.
- c. Granting the requested variances is not an unreasonable circumvention of the Zoning Ordinance, as this non-conforming lot was originally platted in 1933. The size and shape of the lot have remained unchanged since its creation. Allowing a modest increase in the size of this home is only possible with the approval of these variances.
- d. The subject site is a legal non-conforming lot of record, recognized by the Comprehensive Plan as being a part of the Clays Ferry Rural Settlement. This is both historically and symbolically important to the Rural Service Area, creating a unique condition that is not commonly found in many other properties in the A-R zone.
- e. The requested variance is more a result of a fire that destroyed the former residence on this property than any other single factor. Allowing a modest increase in the size of the home on this lot is only possible with the approval of these variances.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed according to the submitted application and site plan.
2. The applicant shall obtain all applicable permits, including a Building Permit and a Certificate of Occupancy from the Division of Building Inspection.

Representation – Mr. Matt Carter, Vision Engineering, was present representing the appellant. Mr. Stumbo asked Mr. Carter if the appellant was in agreement with the two conditions recommended by the staff. Mr. Carter replied affirmatively.

Discussion – Mr. Griggs asked if the original footprint for the house previously had a two-car garage. Mr. Carter replied that it did not. Mr. Griggs then asked if the new house is to be larger than the one previously on the property. Mr. Carter replied affirmatively, and that it was slightly larger than the previous one.

Mr. Griggs asked the staff if they were confident that this would not set any sort of negative precedent. Mr. Emmons replied that there was previously an off-street parking area available on the lot for two cars. He said that the house that used to be on the lot was a non-conforming structure, which could be reconstructed. In order to enlarge the structure, the dimensional variances were necessary. He didn't believe that the new garage would make a difference in this rural settlement. He said that the Comprehensive Plan recommends

that building massing in rural settlements such as this not be out of scale, and this home will meet that recommendation, as it is not a mansion but a modestly sized house.

Mr. Griggs said that the Board had consistently held a hard line that non-conforming uses not be enlarged. Mr. Emmons agreed, but replied that this is a non-conforming structure due to the setbacks from the two roadways. He said that if the setback variances are granted, the house would no longer be a non-conforming structure. He said that there is no place on the subject lot where a home could be built, due to its small size, without some sort of dimensional variance. Mr. Sallee also agreed, and added that this does not involve a non-conforming use; but, rather, a non-conforming structure. The residential use proposed is one that conforms to the A-R zone. Mr. Griggs thanked the staff for these clarifications.

Citizen Comment – There were no citizens present to comment on this proposal.

Action – A motion was made by Ms. White, seconded by Mr. Glover and carried unanimously (Moore and Meyer absent) to approve **V-2012-80: RALPH SENNINGER** – an appeal for variances to: 1) reduce the required front yard from 50 feet to 15 feet; and 2) reduce the required rear yard from 25 feet to 5 feet in order to construct a single family residence in the Agricultural Rural (A-R) zone, at 8839 Beach Road as recommended by the staff, and subject to the two conditions recommended by the staff.

F. Conditional Use Appeals

1. **C-2012-76: IDEAL EXCHANGE, INC.** - appeals for a conditional use permit to operate a pawn shop in a Highway Service Business (B-3) zone, at 510 E. New Circle Road, Suite 180 (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as this type of use is not concentrated along this portion of New Circle Road; and the applicant will not be displaying or selling merchandise outside.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The pawnshop shall be established in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to any construction and/or renovation, and prior to opening the pawn shop.
3. The applicant will provide documentation to the Division of Planning that the existing landscape buffer areas either meet Article 18 requirements for a hedge and trees, or provide for additional landscaping per the Zoning Ordinance, prior to the issuance of a Zoning Compliance Permit.
4. No outdoor display or sales of merchandise will be allowed on the property, including on the right-of-way of New Circle Road.
5. Firearms will not be sold or purchased at this location without approval of an amended application by the Board of Adjustment.
6. This approval shall become null and void should the appellant no longer own the property or operate this business on the subject property.

Representation – Mr. Rich Coppersmith was present representing the appellant. Mr. Stumbo asked Mr. Coppersmith if he agreed with the six conditions recommended for this conditional use by the staff. Mr. Coppersmith replied in the affirmative.

Mr. Coppersmith asked if shrubs were recommended to be planted in the rear of the property along the fence. Mr. Emmons replied that the zone-to-zone screening requirements typically require a fence, a hedge planting, and a tree at least every 40' along the property boundary. Mr. Coppersmith asked if the hedges were to be planted on their property, or not. Mr. Emmons replied that since they occupied an "end unit" in this commercial building, the staff recommendation was for the landscaping to be installed only from the end unit to the edge of the property, and not along the entire rear line of the subject property. Mr. Sallee added that the rear of this property abuts a residential zone, and the zone-to-zone landscaping requirements mandate a hedge or a fence, at the appellant's choice. Mr. Coppersmith responded that there is already a fence in place there. Mr. Sallee said that that would meet the requirements along the rear of the property, but along the side property line, there is a parking lot, and that would need to have a hedge screening planted along that vehicular use area if no hedges were already in place there.

Citizen Comment – There were no citizens present to comment on this proposal.

Action – A motion was made by Mr. Griggs, seconded by Ms. White and carried unanimously (Moore and Meyer absent) to approve **C-2012-76: IDEAL EXCHANGE, INC.** – an appeal for a conditional use permit to operate a pawn shop in a Highway Service Business (B-3) zone, at 510 E. New Circle Road, Suite 180, based upon the staff's recommendation, and subject to the six recommended conditions.

2. **C-2012-74: FOUR SEASONS MARTIAL ARTS / COLLEEN O'DONNELL** - appeal for a conditional use permit to establish an athletic club facility in a Light Industrial (I-1) zone at 951 Floyd Drive (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. No new construction will be required, and there are no adjacent or nearby uses that are likely to be adversely impacted. Very little traffic will be generated, and sufficient off-street parking is conveniently located at the front of the suite that is proposed to be occupied by this use.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The proposed athletic club facility (martial arts center) will be operated in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to continuing the use of the athletic club facility.

Representation – Mr. Gary Thompson was present on behalf of the appellant. Mr. Stumbo asked if the appellant would agree to abide by the two recommended conditions for this use. Mr. Thompson replied in the affirmative.

Citizen Comment – There were no citizens present to comment on this proposal.

Action – A motion was made by Mr. Glover, seconded by Mr. Smith and carried unanimously (Moore and Meyer absent) to approve **C-2012-74: FOUR SEASONS MARTIAL ARTS / COLLEEN O'DONNELL** – an appeal for a conditional use permit to establish an athletic club facility in a Light Industrial (I-1) zone, at 951 Floyd Drive for the reasons recommended by the staff, and subject to the two conditions recommended by the staff.

3. **C-2012-77: BLUEGRASS REGIONAL MENTAL HEALTH** - appeals for a conditional use permit to establish an assisted living facility/rehabilitation home in a Planned Shopping Center (B-6P) zone, at 3479 Buckhorn Drive (Council District 7).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties because 24-hour supervision will be provided, and the site can adequately accommodate this facility. Nearby residential uses will be buffered from this use because this particular location only shares property boundaries with a park and other commercial properties.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The assisted living and rehabilitation facility shall be established in accordance with the submitted application and site plan.
2. A Zoning Compliance Permit and an Occupancy Permit shall be obtained from the Divisions of Planning and Building Inspection prior to opening the facility.

Representation – Mr. Steven Garrison was present representing the appellant. Mr. Stumbo asked if the appellant would agree to abide by the two conditions recommended by the staff for this use. Mr. Garrison replied affirmatively.

Mr. Emmons said that the staff had received two letters of opposition from area residents, and he circulated them to the Board for their review.

Discussion – Mr. Stumbo said that the letters indicated concerns about the personal safety of residents and concerns about the behavior of the facility's residents. He asked Mr. Garrison if he could describe the facility's

operations, in order to mitigate those concerns. Mr. Garrison said that the proposed facility would have a supervised program for residents, which would not be “dangerous criminals.” He said that residents are not allowed to “come and go,” and this is to their benefit to stay in the program. He said that most are there for a month, and that they offer classes for their family members. Their residents would not be leaving the facility and they would not be a danger to the neighborhood.

Mr. Stumbo asked if residents can leave the program anytime they wish. Mr. Garrison replied that they may, but they may not later return.

Mr. Griggs asked if this program was mandated by the courts, or if it were more designed for people that recognize that they have a substance abuse or alcohol problem they need to address. Mr. Garrison replied that it could be either. Mr. Griggs asked, if persons “walk away” from this program, if they have given up or if they are failing some court-appointed requirement. Mr. Garrison replied that the courts are notified when some persons choose to leave the program, and then the court may take any action they deem necessary. For persons that voluntarily enter the program, and then decide that they will not complete it for some reason, then they are free to leave.

Mr. Griggs asked if persons at the facility may leave for work, or wander off occasionally, or if their whereabouts are known 24/7 and supervised. Mr. Garrison replied that theirs is a supervised program, and residents are not allowed to leave while in their care, unless they travel in a group with staff members. They generally reside there for the entire 28 days of the program.

Ms. White asked if the residents are allowed to go outside the building. Mr. Garrison replied that they are, when supervised. They plan to have a screened outdoor area adjacent to the building, but residents will not be permitted to wander through the shopping center or to the Shell station. Ms. White said that this would address the neighbors’ concerns if the residents will not be allowed to wander around in the neighborhood.

Mr. Glover asked which State agency regulates their program. Mr. David Haydon replied for the appellant that they were licensed by the Kentucky Department of Behavioral Health. Mr. Glover asked if they had other locations in the area. Mr. Garrison said that they have up to 100 locations, but not all were designated to treat substance abuse patients. They offer outpatient services, family services, foster care, children’s services, and a number of others. He said that they already offer an adult day care program at the location where they are requesting this conditional use permit. Mr. Glover asked if they had other similar facilities throughout the state. Mr. Garrison replied negatively, and said that this was their only location for a residential substance abuse program.

Mr. Glover asked if there were any other state agencies that regulate their programs. Mr. Garrison replied that they were regulated by the Joint Commission on Accreditation on Hospital Organizations. Mr. Glover asked if they were inspected regularly or only upon complaints. Mr. Garrison replied that they have a tri-annual inspection, and one up to every 18 months. He said that, of course, a complaint could also trigger an inspection.

Mr. Glover asked if Bluegrass Health had ever previously operated a similar use. Mr. Garrison said that they currently operate this facility on the campus of Eastern State Hospital. He said that the grounds of the new hospital at Coldstream do not have facilities planned for this use. That is why it is proposed to relocate to this location.

Citizen Comment – There were no citizens present to comment on this proposal.

Action – A motion was made by Ms. White, seconded by Mr. Glover and carried unanimously (Moore and Meyer absent) to approve **C-2012-77: BLUEGRASS REGIONAL MENTAL HEALTH** - an appeal for a conditional use permit to establish an assisted living facility/rehabilitation home in a Planned Shopping Center (B-6P) zone, at 3479 Buckhorn Drive for the reasons recommended by the staff and subject to the two conditions recommended by the staff.

4. **C-2012-78: TOTAL GRACE BAPTIST CHURCH** - appeals for a conditional use permit to establish a child care facility in a Planned Neighborhood Residential (R-3) zone, at 1313 N. Limestone Street (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Child care facilities, both in conjunction with a church and as a stand-alone day care have

- previously been approved at this location.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The child care facility shall be established in accordance with the submitted application and site plan, with the exception of the outdoor play area, which will be relocated to the area adjacent to 102 Withers Avenue or redesigned to be a permanent play area at the rear of the property as submitted. Prior to the issuance of Zoning Compliance Permit, the applicant shall submit a revised site plan to the Division of Planning with the details of the revisions.
2. A Zoning Compliance Permit and an Occupancy Permit shall be obtained from the Divisions of Planning and Building Inspection prior to opening the child care facility.
3. The dropping off and picking up of students shall be reviewed by the Division of Traffic Engineering and shall be managed to ensure that vehicles do not stack on Withers Avenue or North Limestone Street.
4. The proposed child care facility, including a day care and an after-school program, will be limited to a total of 50 children.

Representation – Mr. Sherrod LaDette was present to represent the appellant. Mr. Stumbo asked if the appellant had reviewed the four conditions recommended by the staff, and if the appellant would agree to abide by them. Mr. LaDette replied affirmatively to both questions.

Discussion – Mr. Griggs asked if the appellant was in agreement with the recommendation to relocate the outdoor play area to the rear of the property. Mr. LaDette replied that they were in agreement with that recommendation as well.

Citizen Comment – There were no citizens present to comment on this proposal.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover and carried unanimously (Moore and Meyer absent) to approve **C-2012-78: TOTAL GRACE BAPTIST CHURCH** – an appeal for a conditional use permit to establish a child care facility in a Planned Neighborhood Residential (R-3) zone, at 1313 N. Limestone Street based on the staff recommendation and subject to the four recommended conditions.

E. Administrative Review

2. **A-2012-62: CLYDE SIMMONS, JAMIE SHIER, AMY CLARK, SHERRI HUMAN and KAREN BASSETTI** - appeal for an administrative review of the Division of Building Inspection's issuance of a permit for paving in the required front yard, in a Single Family Residential (R-1E) zone, within the defined Infill & Redevelopment Area, at 626 Kastle Road (Council District 3).

As this is a 3rd party appeal, there is no recommendation for either approval or disapproval. A report will be made at the public hearing.

Representation – The appellants were not present at this time for their appeal.

Mr. Stumbo asked to hear from the staff. Mr. Emmons said that this item was continued to today's agenda from the Board's meeting last month. Since the appellants were not present, nor were representatives from the Division of Building Inspection, the staff would recommend that this appeal again be continued to the Board's January 25, 2013 meeting. Mr. Sallee added that the staff could contact the appellants and the Building Inspection staff to inform them of this upcoming meeting.

Action – Mr. Glover made a motion that was seconded by Ms. White and carried unanimously (Moore and Meyer absent) to continue **A-2012-62: CLYDE SIMMONS, JAMIE SHIER, AMY CLARK, SHERRI HUMAN and KAREN BASSETTI** – an appeal for an administrative review of the Division of Building Inspection's issuance of a permit for paving in the required front yard, in a Single Family Residential (R-1E) zone, within the defined Infill & Redevelopment Area, at 626 Kastle Road to the Board's January meeting.

IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.

V. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.

A. Landscape Review Committee – Mr. Sallee said that the term of Mike Cravens, Lexington Homebuilder member on

the Landscape Review Committee, would expire at the end of this day (November 30). He said that Mr. Cravens had agreed to be re-appointed for another four-year term. Names and terms of current Landscape Review Committee members are as follows:

<u>TERM</u>	<u>NAME</u>	<u>REPRESENTING</u>
Term on BOA	Jim Griggs	Board of Adjustment
11/30/2013	Mr. Louis Hillenmeyer, III	Nurseryman
11/30/2014	Mr. Richard Weber	Landscape Architect
11/30/2015	Ms. Karen Angelucci	Tree Board
11/30/2012	Mr. Mike Cravens	Lexington Homebuilders

Mr. Sallee said that, since Mr. Cravens had agreed to continue to serve on this Committee, the staff would ask the Board to take action to reappoint him to serve on the Landscape Review Committee.

Mr. Griggs said that he couldn't recall how the Board had the authority to appoint members to this committee. Mr. Sallee replied that this is an item that usually appears on the Board's agenda each November. In fact, the staff reviewed last year's November minutes to confirm that Ms. Angelucci had been reappointed by the Board to the Landscape Review Committee.

Action – A motion was made by Ms. White seconded by Mr. Smith and carried unanimously (Moore and Meyer absent) to reappoint Mr. Mike Cravens to a four-year term on the Landscape Review Committee.

- B. Request for Revocation Hearing - A memo was sent to the Board advising them of a conditional use permit approved on April 27, 1990 for which the conditions have not been adhered to. The Division of Planning's Zoning Enforcement Section has requested that a revocation hearing for **C-90-45: Con Robinson Contracting Company, Inc.** be scheduled for the Board's January 25, 2013 hearing.

Discussion – Mr. Glover said that this case involved one of his first hearings, and he recalled a great deal of difficulty with this case. Mr. Marx said that this property was more recently before the Board; but 22 years ago, some 22 acres of this farm was permitted for a composting conditional use permit. Four years ago, a major excavation project was initiated by the property owner, which was permitted by the Division of Engineering, the purpose of which was to create a hard and more level surface for Mr. Robinson's composting operation. There were many questions raised about the operation.

Mr. Marx said, that because Mr. Robinson was selling some of the material from the site, the staff advised that a conditional use permit was needed for a quarry. The application was made to the Board, but that request was denied, and the practical implication was that Mr. Robinson could not sell any of the material.

Mr. Marx said that, very recently, the staff has documented that fill dirt has been sold, by following trucks to the construction sites where the businesses confirmed that the material was being purchased. The staff is under the impression that the site is being operated more as a quarry than as a composting operation. There is very little of the leveled site that is being used for the composting operation. This, combined with the recent sale of material, led the staff to bring this to the Board's attention, and asks to schedule a revocation hearing for January 25th.

Mr. Glover asked what the staff is recommending be revoked. Mr. Marx said that the issue would be whether to revoke the 22-year old permit for composting at this location. Mr. Glover said that that doesn't seem to be the issue, but that it is more about the selling of rock that Mr. Robinson has quarried off his property. Mr. Marx said that they were related. Mr. Glover wanted to make sure that things were done legally, so as not to provide the appellant with any defense for his actions. Mr. Marx said that the question is whether the ongoing activity is truly for composting, and that the Board must decide that point. Mr. Marx said that this was not unlike the same issue of the recent revocation for the Community Inn, which was not operating a church.

Mr. Glover said that this issue has to do with the Board's authority, as it is administrative and not a police force. He wanted to make sure that if the Board acted, that they did so correctly.

Mr. Glover asked if selling rock that has been quarried, albeit without the proper permission constitutes the operation of a quarry. Mr. Marx replied affirmatively, based upon the definition of that use in the Zoning Ordinance. Mr. Glover said that his use, then, is in violation of his previous denial by the Board. Mr. Marx replied affirmatively,

Mr. Glover asked about the Board's authority in terms of applicants that ignore or violate the Board's rulings. Mr.

Marx replied that, in this case, his office delivered a Notice of Violation to Mr. Robinson about this use. Even after receiving that notice, he sold additional material, and was then issued a civil citation. He has appealed that citation to the Infrastructure Hearing Board. He said that the next possible step would be a citation to District Court, based on a criminal complaint.

Mr. Glover asked, if Mr. Robinson appears at the Board to discuss revocation of a composting permit, but the current complaint is about quarrying, what the Board's legal response would be. Mr. Sallee replied that the revocation hearing would be for the Board to determine whether or not Mr. Robinson was complying with the original conditions for the composting use approved 22 years ago. Mr. Glover said that the Board could determine whether or not that included quarrying, as well.

Mr. Griggs asked about the fines that might be imposed upon this operation prior to it appearing on a court docket. Mr. Marx said that each time a fine is levied, his office must document a separate occurrence of the violation. This is problematic in that there must be an inspector at the right place at the right time. He said that they were able to document this activity twice in the past month.

Mr. Glover said that most of the Board's rulings were permissive, and they don't usually affirmatively order that people "do things." He asked how the enforcement of an order to "not do something" would be conducted and how the Board's decisions are enforced. He asked if there are processes for bringing actions in Fayette District Court for violations of an order of the Building Inspector or of the Board. Ms. Jones, legal counsel, said that the County Attorney's office would prosecute a criminal violation; so the staff looked at the best way, in the context of planning and zoning, to do something about this. She said that the appellant sought to do something at this site many years ago, and the staff felt that the current operation is something else entirely, which the appellant knows he is not supposed to be doing. She said that there may be some other, and more drawn out, proceedings that could occur; but then they wouldn't be dealing with the Board.

Mr. Glover asked that everyone think about the processes, prior to the end of a revocation hearing. Ms. Jones replied that if the Board held a revocation hearing, the Board would need to review the terms of what was allowed under the conditional use permit in this A-R zone. Mr. Glover said that the issue, then, was to decide whether the Board should hold a revocation hearing on the conditional use permit.

Mr. Griggs said that the Board needs to know, from the staff, whether or not the appellant is in violation of the conditions of the prior conditional use permit. Mr. Marx replied that it is a bit tricky, since things were done a bit differently 22 years ago; but that it would be the staff's burden to present those facts to the Board. He said that there would be much more detail provided at that hearing. He said that there is an overall presumption of the use that is to take place on this site.

Mr. Glover asked what authority the Board would have to put conditions on the use. Ms. Jones said that she wasn't sure the Board could do that. She said that the Board is not mandated to revoke the prior permit, and could provide the appellant with some directives in order to comply with the prior permit, provided it did not involve any quarrying activities. She said that, had he had permission to operate a commercial quarry, then there would not have been any need to hold the more recent hearing 1½ years ago.

Mr. Glover asked why the issue, then, is with the commercial composting permit. He asked if he started quarrying rock in his own back yard, he wouldn't get this type of revocation hearing before the Board. Mr. Sallee replied that if Mr. Glover had a conditional use permit for a "family child care" use in his backyard, and that area for the quarrying in that back yard was also approved to be the outdoor play area, then the staff would likely have a very similar recommendation on what the Board was considering today.

Mr. Glover asked, that if he had no conditional use permit, what would stop him from doing so. Mr. Marx said that his office would issue a Notice of Violation; and if the problem wasn't repaired in a reasonable amount of time, then they would issue a civil citation. Mr. Glover asked what the violation would be. Mr. Marx said that the violation would be that there is no provision in the law for him to be able to do that.

Mr. Glover said that he was more comfortable with that. Mr. Marx said that the problem of not tying it to the conditional use permit was that it involves the same land. All of the activity has taken place under the guise of the conditional use permit. He said that there should be more detail provided if the revocation hearing is scheduled. Mr. Glover said that he did not want to schedule such a hearing if he didn't understand the purpose of the hearing, or of the Board's authority.

Action – A motion was made by Mr. Glover, seconded by Mr. Griggs and carried unanimously (Moore and Meyer

absent) to schedule a revocation hearing for **C-90-45: CON ROBINSON CONTRACTING COMPANY, INC.** for the Board's January 25th public hearing.

- VI. **NEXT MEETING DATE** - Due to the Christmas holiday, the next meeting date will be December 14, 2012, which is two weeks earlier than usual.
- VII. **ADJOURNMENT** – There being no further business, the Chair declared the meeting adjourned at 1:51 PM.

Barry Stumbo, Chair

James Griggs, Secretary